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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 372

**R. B. MORRIS, DOING BUSINESS AS MORRIS &
LOWTHER; H. M. HEWITT AND LEW NUNA-
MAKER, ETC., ET AL., APPELLANTS,**

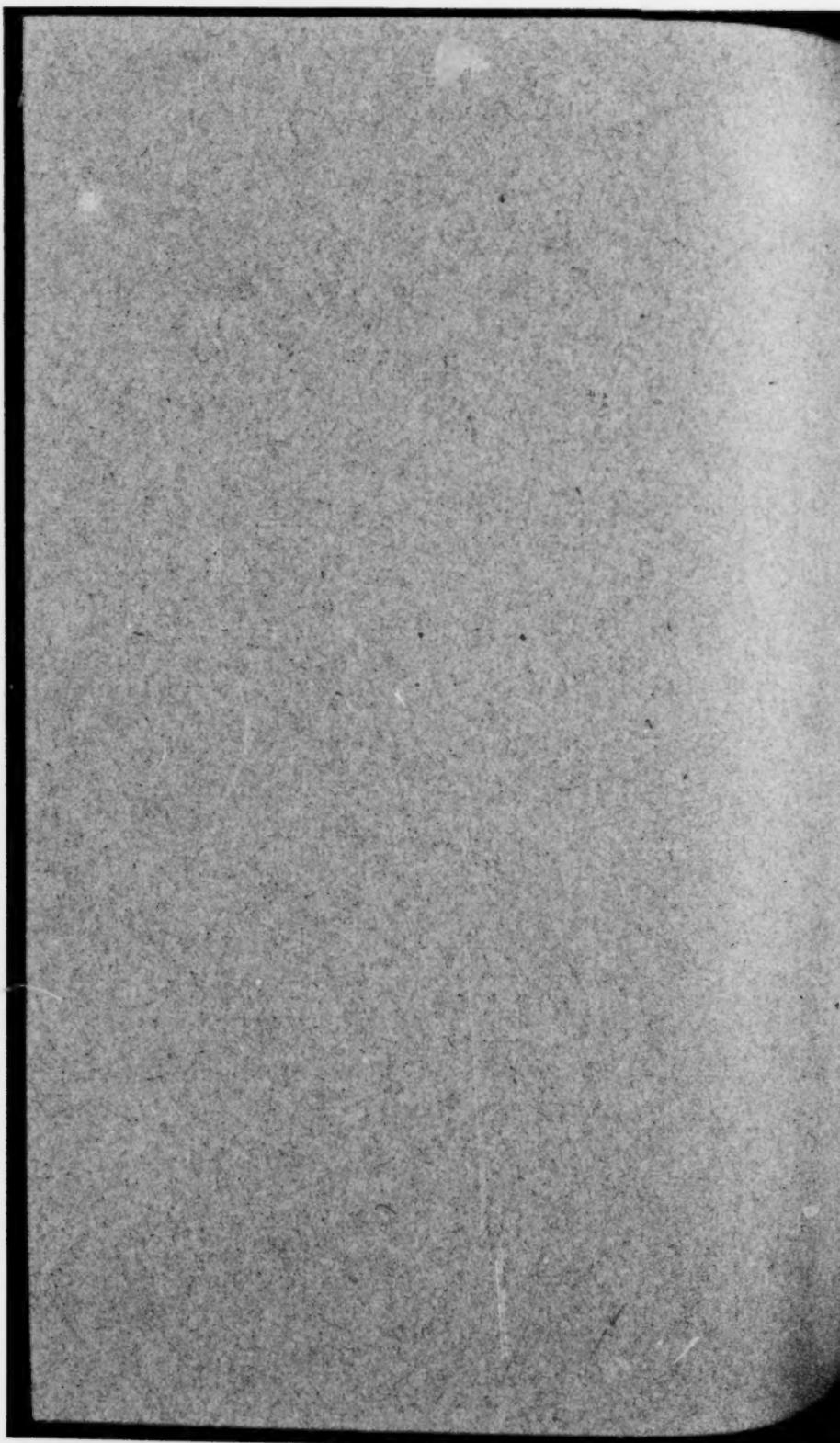
v.s.

**WM. DUBY, H. B. VAN DUZER, AND W. H.
MALONE, ETC.,**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON**

FILED MAY 12, 1926

(31,936)



(31,926)

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1926

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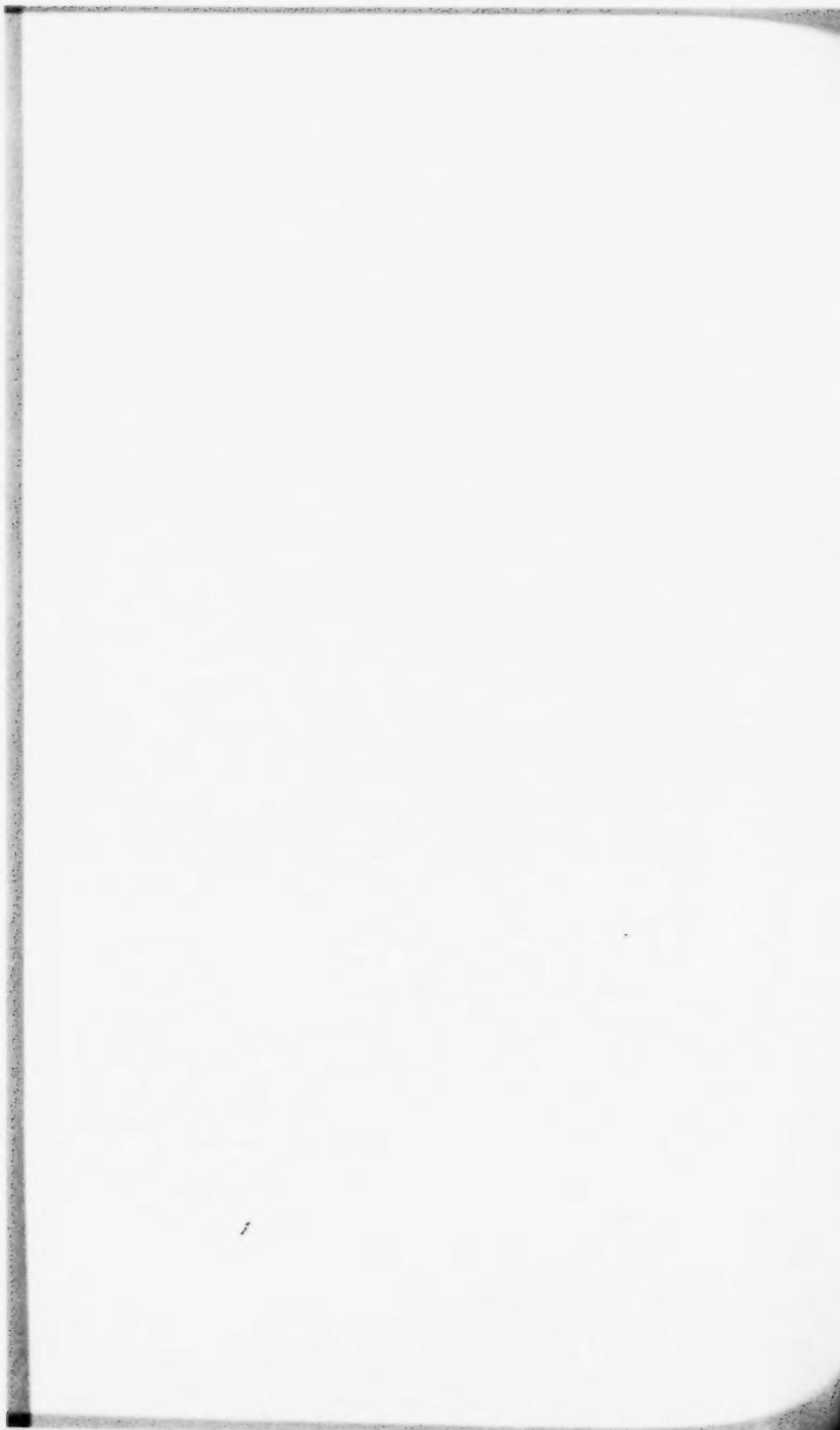
vs.

WM. DUBY, H. B. VAN DUZER, AND W. H. MALONE, ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON

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[fol. a-1]

NAMES AND ADDRESSES OF THE ATTORNEYS OF RECORD

W. R. Crawford, 325 Lumber Exchange Building, Seattle,
Washington.

I. H. Van Winkle, Attorney General of the State of
Oregon, and J. M. Devers, Assistant Attorney General of
the State of Oregon, Salem, Oregon, for the appellee.

[fol. 2]

**IN UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF OREGON**

No. 8778-E. In Equity

R. B. MORRIS, Doing Business as Morris & Lowther; H. M.
Hewitt and Lew Nunamaker, Doing Business as John
Day Valley Freight Line; H. L. Livingston, Doing Busi-
ness as Bend-Portland Transit, and Portland Hood River
Truck Line, Inc., Plaintiffs,

vs.

WM. DUDY, H. B. VAN DUZER, and W. H. MALONE, as the
Oregon State Highway Commission, Defendants

AMENDED BILL OF COMPLAINT—Filed January 25, 1926

To the Honorable Judges of the District Court of the
United States for the District of Oregon, sitting in equity:

The plaintiffs, R. B. Morris, doing business as Morris &
Lowther, H. M. Hewitt and Lew Nunamaker, doing busi-
ness as John Day Valley Freight Line, H. L. Livingston,
doing business as Bend-Portland Transit and Portland
Hood River Truck Line, Inc., bring this their amended bill
of complaint, by leave of Court obtained, on behalf of them-
selves and all other members of the Auto Freight Trans-
portation Association of Oregon and Washington, a co-
operative association, against Wm. Duby, H. B. Van Duzer
and W. H. Malone, composing the Oregon State Highway
Commission, defendants: And thereupon plaintiffs com-

plain of the defendants and show unto Your Honors as follows:

1

That the plaintiffs R. B. Morris, is now and has been for more than Four and One-half Years last past, an owner and operator of motor trucks, carrying freight of all classes for compensation from Portland, Oregon, on the Columbia River Highway to The Dalles, Oregon and intermediate points and is now and has for such years last past rendered such service daily as a common carrier; that the plaintiffs H. M. Hewitt and Lew Nunamaker now and have been for more than Six Months last past the owners and operators of motor trucks carrying freight for compensation on the [fol. 3] Columbia River Highway from Portland, Oregon through The Dalles into John Day Valley; the plaintiff H. L. Livingston, is now and has been for more than Seven Months last past an owner and operator of motor trucks, carrying freight for compensation on the Columbia River Highway from Portland, Oregon through The Dalles on to the Dalles-California Highway; and the plaintiff, Portland Hood River Truck Line, Inc., is now and has been for more than Five Months last past, an owner and operator of motor trucks, carrying freight for compensation on the Columbia River Highway from Portland, Oregon to The Dalles, Oregon.

That the said plaintiffs, and each of them, have been required and compelled to obtain permits from the Public Service Commission of Oregon in order to operate their said motor trucks on the public highways of the State of Oregon carrying freight for compensation and said plaintiffs, and each of them, have paid the required fee to said Public Service Commission for such permits; and further under the provisions of said Public Service Law and the rules and regulations of the Commission, the plaintiffs, and each of them, were required to and did file with said Commission the tariff and schedule of operation, including the termini and route to be operated on; that such tariff and schedules so filed fixed reasonable, just and remunerative charges on the freight so carried and such rates were based upon the capacity of the said motor trucks so owned and operated as aforesaid; that under the provisions of

said Public Service Law such scheduled rates can not be changed without a hearing and in no event could the Public Service Commission fix any rate except a reasonable, just and renumerative rate and that the scheduled rates so filed could not be lowered without compelling these plaintiffs, and each of them, to carry such freight on such motor trucks except at a price which would destroy and confiscate these plaintiffs property rights and business, that further the plaintiffs, and each of them, were required to and did pay to the State of Oregon license fees to operate on the said Columbia River Highway, which license fees were [fol. 4] graduated according to not only the capacity of the motor trucks but also on the width of the tires thereof, and these plaintiffs, and each of them, have paid the license fees, including the fee on the tires, for the carrying of the maximum capacity of the weight and load; that the plaintiffs, and each of them, were and are now wasted with the right and privilege of operating their said motor trucks carrying freight for compensation on the Columbia River Highway from Portland, Oregon to or through The Dalles, Oregon with the limitation of the gross weight of truck and load of 22,000 pounds and for all of which rights and privileges were acquired under the Laws of the said State of Oregon and for which these plaintiffs, and each of them, were compelled to and have paid.

That these plaintiffs, and each of them, have and are delivering freight at their termini at Portland, Oregon of The Dalles, Oregon, to other carriers of motor trucks for carriage in and out of the State of Oregon as a continuous service, to-wit, interstate commerce; that these plaintiffs, and each of them, are giving a service to the public not only along the said Columbia River Highway Multnomah County and Hood River but also outside of the State of Oregon which is not and has been for many years constant and efficient and that the public demand the continuance of the present rates and service, which service is one made along the highway at the doors of the consignee without additional charge.

That these plaintiffs are and have been members of the Auto Freight Transportation Association of Oregon and Washington, and such association has leased and is operating a Terminal in the City of Portland, Oregon, which build-

ing was built exclusively for the use of said association at a cost of Two Hundred and Eighty Five Thousand (\$285,000.00) dollars, including the value of the land approximately Eighty Five Thousand (\$85,000.00) dollars and such property occupies 40,000 square feet and has a building Four stories in height on portion of said property.

[fol. 5] That the city of Portland, Oregon, compelled these plaintiffs, as well as all other truck operators, similarly situated, to install a terminal of such character in said City, which has been done and the same has been operating for a number of years and that these plaintiffs, and each of them, are compelled to pay their proportionate share of the expenses of such terminal.

That these plaintiffs, and each of them, as well as other members of said association, have been increasing the volume of their business and have and are now furnishing the public a service which is demanded by public convenience and necessity.

II

The defendants, Wm. Duby, H. B. Van Duzer and W. H. Malone, are the duly qualified and acting board of the Oregon State Highway Commission, with offices at Salem, Oregon.

III

That Congress on July 11, 1916, enacted an Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes."

That according to the provisions of said act the Federal Government agreed to furnish moneys to the States for the purpose of aiding in the building of rural post roads, provided any State desiring such aid would first pass necessary legislation adopting the provisions of such act.

That thereafter the legislature of Oregon duly enacted a certain law, entitled "An Act to accept the benefits of the Act passed by the Sixty-fourth Congress of the United States, entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," and to provide for the issuance of bonds of the State of Oregon to raise such money as may

be required to meet the requirements of said Federal statute, and to authorize the State Board of Control to take action and to perform such duties as may be necessary to meet the requirements of said Federal Act and Federal officials acting under said Act."

[fol. 6] The above act being Chapter 175 of the General Laws of Oregon 1917. Such law went into force and effect on or about February 17, 1917. Such law is herein referred to and made a part hereof the same as if set out in full.

That the State of Oregon duly enacted a certain law entitled "An Act to provide for the construction of roads and highways in the State of Oregon; to provide for the issuance of bonds by the State of Oregon to raise money to carry out the purposes of this Act; to authorize the State Highway Commission to take such action and perform such duties as may be necessary to meet the requirements of this Act; to designate and authorize the construction of certain hard-surfaced highways and certain post roads and certain forest roads, and to provide for the letting of contracts for the construction, paving and maintenance of roads and highways; to make the surplus arising from the fees collected under House Bill No. 509 of the present legislative session a fund under the jurisdiction of the State Highway Commission with which to pay interest and principal on the bonded indebtedness of the State, contracted by the State for road purposes, and other lawful claims incurred by said Commission, and to provide modifying the terms of House Bill No. 21 passed by the Twenty-ninth Legislative Assembly of the State of Oregon, and to provide for submitting this Act to the people and for the calling of a special election therefor, and declaring an emergency."

The above Act is Chapter 423 of the General Laws of Oregon 1917. Such law is herein referred to and made a part hereof the same as if set out in full.

That section 6 of the above law determined that certain highways should be permanently constructed and finished with a hard surface. In subdivision 4 of said section 6 the following portion of the Columbia River Highway between the Multnomah County line Easterly through the City of Hood River and Hood River County, etc., was determined to be permanently constructed and paved.

That thereafter Congress duly amended the said rural post road act which had been enacted on July 11, 1916, by an Act entitled "An Act to amend the Act entitled 'An Act to provide that the United — shall aid the States in the construction of rural post roads, and for other purposes,' approved July 11, 1916, as amended and supplemented and for other purposes."

Such amended Act was passed November 9, 1921, and is [fol. 7] now in full force and effect.

That said State of Oregon has received many hundreds of thousands of dollars from said Federal Government under the provisions of said Federal Acts, and is now receiving many hundreds of thousands of dollars yearly under said Acts. That such portion of the said Columbia River Highway between the Multnomah County Line and Hood River, is 22.11 miles, in length, and that such portion of said Columbia River Highway is a part of the Interstate Highway constructed and used from Astoria, Oregon, into the States of Washington and Idaho, and further such portion of said Columbia River Highway is covered within the provisions of said Federal Highway Acts and moneys have been received by the said State of Oregon in the construction and reconstruction of such portion of said highway under and subject to the provisions of said Federal Highway Acts. That since January 20, 1920, such portion of said highway has been from time to time improved and reconstructed by widening such highway and straightening out the same at divers points. All under the provisions and subject to the said Federal Highway Acts.

IV

That at the time of the adoption of the said Federal Highway Act by the State of Oregon in the year 1917, as aforesaid, the State of Oregon permitted, allowed and encouraged the highways of said State to be used for the carrying of freight on motor trucks and declared that the limit was 5 Tons capacity. That some of these plaintiffs, as well as other members of the said Auto Freight Transportation Association of Oregon and Washington had operated their said motor trucks constructed for the carry-

ing of freight limited to 5 Ton capacity, and that thereafter the State of Oregon enacted a law which for the first time fixed the load limit of the gross weight of truck together with the weight of the freight. That up to the year 1921 the said State Highway Commission and the County Courts had never been vested with jurisdiction and authority to [fol. 8] modify, amend or change the said provisions of any laws of the State of Oregon relating to the capacity of any motor truck or the said gross weight of said motor truck and load.

That after the adoption of the said "Federal Highway Act," as aforesaid, and receiving the said moneys from the said Federal Government subject to the terms and conditions of the said "Federal Highway Act," and after the construction or reconstruction, not only of that portion of the said Columbia River Highway between Multnomah County and Hood River, but also West from said Multnomah County Line to Astoria, Oregon, and East from Hood River to The Dalles, by permanently constructing the same by hard-surfacing the same with pavement, the State of Oregon in the year 1921 enacted the following law:

"An Act providing for regulating the use, registration, licensing, taxing, identification, conduct and operation of vehicles and bicycles in the State of Oregon; and for the protection of same; the registration and licensing for persons operating same; providing for punishment for violations of this act; prohibiting the unauthorized use or possession of a vehicle; limiting the authority of cities and towns on subjects concerned with said vehicles and bicycles; providing for the disposition of funds derived from the operation of this act, and repealing sections 2223-1, 4768, 4769, 4770, 4771, 4772, 4773, 4774, 4775, 4776, 4777, 4778, 4779, 4780, 4781, 4782, 4783, 4784, 4785, 4786, 4787, 4788, 4789, 4790, 4791, 4792, 4793, 4794, 4795, 4796, 4798, 4799, 4800, 4802, 4803, 4804, 4805, 4806, 4807, 4809, 4810, 4811, 4812, 4813 and 4814, Oregon laws, and all other acts and parts of acts in conflict herewith."

Such above law is Chapter 371, laws of 1921 special session. Such law is herein referred to and made a part hereof the same as if set out in full.

That section 35 and 36 of said law of 1921 and section 36-A, an amendment made in the year 1923, being General Laws of Oregon p. 204, provided that the Highway Commission and County Court may grant special permits to move any vehicles, article, property, or thing having a combined weight of Twenty-two thousand pounds upon the giving of a bond to indemnify the State or County for any damage to the highway that may be caused therefrom; and further the State Highway Commission and County Courts were authorized to limit weights and speed and close highways "Whenever the highway commission or any county court or [fol. 9] board of county commissioners of any county of this state shall find that any public highways of the state or section thereof is being damaged by reason of being subjected to any particular kind or character of traffic * * *, and for the protection from undue damages of any highway or highways, or of any section or sections thereof and, with respect to such highway or any sections thereof, to reduce the maximum weights and speed in this act, * * * and is hereby authorized and empowered to determine and fix the reduced weights and speeds, which shall be the maximum weight and speed for vehicles or things moving over such highway or highways or any sections thereof," and further section 36-A provides that an operator of a motor vehicle is liable for damages to highways. The said section 36 prescribes penalties amounting not to exceed a \$400.00 fine or imprisonment in a county jail for not to exceed one year, or by both such fine and imprisonment. That the said law of 1921, as amended in 1923, reaffirmed the gross weight of trucks and loads and fixed the speed of same based upon such *upon such* gross weight, and further fixed the said rubber tax per inch and forcing the width of tires depending upon the said gross weight.

That after an elapse of more than Four years of operation over said portion of said Columbia River Highway, as aforesaid, and after the passage of said law of 1921, the said defendants, composing the State Highway Commission, did on or about the 28th day of August, 1925, issue an order reducing the legal maximum, gross weights of trucks and loads on that portion of the Columbia River Highway between Multnomah County and Hood River,

Oregon. A copy of such order is herein referred to and attached herewith and made a part hereof marked exhibit "A."

That the said defendants issued such order without any notice to these plaintiffs or any other person, firm or corporation interested and no evidence was ever considered or furnished by these or any plaintiffs or other person, firm or corporation interested, as no opportunity was ever given to these plaintiffs or any other person, firm or corporation [fol. 10] interested to present to the said defendants any evidence in connection with such order, but said order was issued ex parte on the said defendants' own initiative.

That said order was issued by said defendants to take effect and to be in full force from and after October 1, 1925.

That the said plaintiffs and other members of the said Auto Freight Transportation Association of Oregon and Washington, were forced to, under the said law fixing the said weight, and did purchase and pay for motor trucks constructed for the purpose of carrying the said maximum load of 22,000 pounds gross weight of truck and load; that the weight of said motor trucks without load vary from 10,500 pounds to 12,000 pounds; that the load capacity of said trucks varied from 11,500 pounds to 10,000 pounds; that schedule of rates had been filed and were now in force and have been in force for many years between Portland, Oregon and to or through The Dalles and such schedule of rates had been and were fixed and determined by the gross weight of 22,000 pounds of truck and load; that the said Columbia River Highway from Portland to and through The Dalles is situated adjacent and parallel to an existing and operating railroad which serves the territory along the Columbia River Highway and also steamboats operate on the Columbia River, being in competition with these plaintiffs also, and that the rates of such other common carriers were taken into account in the fixing of the rates by these plaintiffs; that these plaintiffs, in order to raise their rates, must make application to the Public Service Commission and show that such additional increase of rates would be reasonable and just and that in order to operate such motor trucks on such portion on said Columbia River Highway, these plaintiffs must charge and collect a rate which will be

practically twice the rate now charged and collected from the termini Portland and The Dalles and beyond, and further will destroy the interstate business which has been developed, as aforesaid, between the States of Oregon, [fol. 11] Washington and Idaho; that the said plaintiffs will not be able to increase the said rates over the rates now on file with said Public Service Commission, as such additional rates would be unreasonable and unjust to the public; and also such additional increased rates would destroy any competition now existing along the said Columbia River Highway, as aforesaid.

V

That the portion of said Columbia River Highway from Portland to the East Line of Multnomah County and adjacent to the portion of said Columbia River Highway mentioned in the aforesaid order, was constructed and hard-surfaced by pavement approximately Eleven years ago, and such portion of said highway from Hood River East was constructed and hard-surfaced by paving about Five years ago, and at the same time the said portion of said highway as set out in the said order was also hard-surfaced by paving, namely Five years ago.

That such portion of the Columbia River Highway from Portland to The Dalles was constructed and reconstructed, after the adoption of the said "Federal Highway Act" in the year 1917, under the direction and control of the State Highway Commission of the State of Oregon as so required by the said "Federal Highway Act." That since the said year 1917 and prior thereto, motor trucks of the same size, weight and carrying capacity, to-wit a gross weight of 22,000 pounds, were and have been operated over and along the said Columbia River Highway from Portland to The Dalles and beyond, and that as provided for in the said "Federal Highway Act" the said Federal aided highways, including that portion of the Columbia River Highway set out in the said order herein, were to be constructed and reconstructed not only to take care adequately of the then traffic on such highways, but also to take care of the future traffic on such highways.

That in the year 1920 after the construction and recon- [fol. 12] struction of such highway, as set forth hereinabove,

about Four motor trucks carrying freight with the maximum gross weight of 22,000 pounds were operated and that since such time the number has been increasing until in the year 1925 Nine trucks of such gross weight were operating on said Columbia River Highway between Portland and The Dalles and beyond, and that in 1925 the other motor vehicles on such highway between said points had increased to an average daily of about 1,500 cars, and also motor trucks, called motor busses, which have been and are now operating carrying passengers for compensation on said highway between said points which weigh with the maximum load of passengers and baggage approximately 16,000 pounds, such motor busses exceed in number the said motor trucks operating with the said gross weight of 22,000 pounds, and that all of said motor vehicles, except motor trucks, including the said motor busses operate at the maximum speed of 30 Miles per hour.

That these plaintiffs deny the statements contained in such order that the said Nine motor trucks limited to the speed of 12 miles per hour are damaging and destroying the said portion of the said Columbia River Highway between the East line of Multnomah County and Hood River, and further the plaintiffs aver that the said portion of said highway is in as good a condition as it has been for years and has not been and is not now being damaged or destroyed as set forth in said order by either the operation of said Nine motor trucks or the said motor busses or the said automobiles and further plaintiffs aver that the portions of the said Columbia River Highway West from the said East Line of Multnomah County to Portland and from Hood River to The Dalles are in the same good condition and are not and have not been damaged and destroyed by the operation of all the said motor vehicles including the said motor trucks.

These plaintiffs have been informed and believe the fact to be and upon such information and belief allege that the [fol. 13] said State Highway Commission, defendants herein, admit that said order so made was not based upon the present or past damage or destruction of said portion of said highway, but solely upon a fear that the said Nine motor trucks might in the future so damage and destroy said portion of said Columbia River Highway, and that the

said portion of said highway set out in said order was in first class condition and repair, as well as the other said portions of said highway as set out hereinabove.

These plaintiffs have been informed and believe the fact to be and upon such information and belief charge that the said defendants have issued a blanket order covering approximately Fourteen other Federal aided highways, or portions of the same endeavoring to limit the said gross, maximum weight of 22,000 pounds to 16,500 pounds, and that such highways or portions of the same are in competition with railroad companies who have constructed and are operating freight lines over rails.

These plaintiffs have been informed and believe the fact to be and upon such information and belief charge that the entire cost last year of the maintenance and repair of said portion of said highway covered by said order do not exceed the sum of \$5,000.00.

That these plaintiffs are willing and able to and will indemnify the said State Highway Commission, defendants herein, by furnishing a good and sufficient bond to pay all damages which they may cause to the highway by reason of their motor trucks while carrying the said gross weight of 22,000 pounds for truck and load, as provided for in the said State law.

VI

That the said defendants; the State Highway Commission, *actions* under the provisions of the said sections of said above mentioned laws of the State of Oregon are arbitrary and unreasonable and are not based upon any hearing in regard to the true facts purported to exist in the said order and are contrary to true facts; that such order [fol. 14] discriminates against these plaintiffs and destroys their business and property, as well as prevents the public from enjoying the benefits derived from the said operation of said motor trucks at the rates for carriage which are now reasonable and just; that such order effects and burdens interstate commerce; that such order as entered is contrary to and in contravention of the "Federal Highway Act" and the Constitution of the United States, especially the 14th Amendment thereof; that such order de-

stroys competition; that such order enables the owners of private automobiles, motor busses and motor trucks of small capacity to monopolize and use the said Federal aided highway contrary to and in defiance of the said "Federal Highway Act" and the Contract entered into with the said State of Oregon.

VII

That these plaintiffs, as well as all other members of the said Auto Freight Transportation Association of Oregon and Washington, pray the protection of the Constitution of the United States, especially the Commerce Clause thereof and the 14th Amendment thereof, as well as of the contract entered into between the said State of Oregon and the Federal Government, as set out hereinabove, and as well as the provisions of the said "Federal Highway Act," against the said illegal acts of the said defendants, the State Highway Commission, acting under the provisions of the said sections 35 and 36 of the said laws of 1921 and section 36-A of the law of 1923, as well as the said provisions of said law of 1921, on the ground and for the reason that the same are contrary to and in contravention of the Constitution of the United States, especially the Commerce Clause thereof and the 14th Amendment thereof, as well as of the contract entered into between the said State of Oregon and the Federal Government, and as well as the provisions of the said "Federal Highway Act."

VIII

That unless these plaintiffs, as well as other members of [fol. 15] the said Auto Freight Transportation Association of Oregon and Washington, are given protection by injunction, they will be arrested daily in the conduct of their business, if their motor trucks exceed the said gross weight of 16,500 pounds and will be forced and compelled, either to discontinue their business or to reduce the said gross weight, as fixed by the law, at 22,000 pounds, to the gross weight of 16,500 pounds, as set out in said order issued by said defendants, all of which would deprive these plaintiffs of their rights to engage in their said operation of their said motor trucks carrying freight for compensation on the

said Federal aided highway as well as preventing interstate commerce and would destroy the use of their said motor trucks on said portion of said Columbia River Highway for which privilege the said plaintiffs have paid charges, including said registration and license fees, as aforesaid, and the premises considered these plaintiffs will sustain large, heavy, irreparable loss, damage and injury, and these plaintiffs have no plain, speedy and adequate remedy at law.

IX

That the matters involved in this contraverey exceed in value the sum of Three Thousand (\$3,000.00) dollars exclusive of interest and costs.

X

For as much as the plaintiffs can have no adequate relief except in this Court, and to the end, that the defendants may, if they can, show why the plaintiffs should not have relief herein prayed, and make full disclosure and discovery of all the matters aforesaid, according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters in this amended bill of complaint hereinbefore stated, but not under oath, an answer under oath being especially waived, the plaintiffs pray that a temporary injunction be granted, restraining the defendants and all [fol. 16] other officers and agents of the State of Oregon, from arresting or threatening to arrest or otherwise preventing, hindering or obstructing the said plaintiffs and all other members of the said Auto Freight Transportation Association of Oregon and Washington, while engaged in operating motor trucks over said portion of the said Columbia River Highway from the East County line of Multnomah County to Hood River, upon the ground and for the reason that the said plaintiffs, as well as other members of the Auto Freight Transportation Association of Oregon and Washington, are operating their said motor trucks when the gross weight thereof exceed 16,500 pounds, but not to exceed the gross weight of 22,000 pounds; that as the constitutionality of a State Statute and the enforce-

ment thereof by the defendants is sought to be enjoined, the plaintiffs prays that the Court proceed to call in Two other Judges of this Court, One of whom to be a Circuit Judge, for the purpose of hearing and determining the application of the temporary injunction as prayed for herein; and that upon the final hearing of this suit, the said Order of said defendants issued on August 28, 1925, limiting the gross weight of motor trucks on that portion of said Columbia River Highway, from the East County line of Multnomah County to Hood River, to 16,500 pounds, as well as the provisions of said law of Oregon of 1921, relating to the powers and authority of the State Highway Commission to limit the gross weight of motor vehicles, including their load, below 22,000 pounds, be declared void and unconstitutional and such interlocutory injunction be made permanent, and plaintiffs pray for such other, further and proper relief as may be just and equitable in the premises, including their costs and disbursements expended herein.

W. R. Crawford, Solicitor for Plaintiffs.

Post-office address: 325 Lumber Exchange Bldg., Seattle, Washington.

[fol. 17] *Duly sworn to by H. M. Hewett. Jurat omitted in printing.*

[fol. 18] EXHIBIT "A" TO AMENDED BILL OF COMPLAINT

OREGON STATE HIGHWAY COMMISSION

Order Reducing Maximum Load Limits on the Columbia River Highway Between Multnomah County Line and Hood River

Whereas the Columbia River Highway between the east boundary of Multnomah County and the west limits of the city of Hood River has been designated and declared to and is a state highway and has been improved and is being maintained by the State Highway Commission pursuant to the laws of the State of Oregon as a state highway, and

Whereas the above state highway in the judgment of the State Highway Commission is being subjected to a kind

and character of traffic which is damaging and injuring said highway and in order to protect said highway against such damage and injury, it is deemed and is the judgment of the Highway Commission and said Commission finds that it will be for the best interests of said highway that the maximum weight now permitted and authorized by law be reduced:

And whereas the State Highway Commission has after due investigation determined and found, and it is the judgment of the Commission, that the maximum weight shall be permitted upon the said road shall be reduced and fixed as in this order provided.

Now, therefore, the premises being in part as above stated, and the State Highway Commission having as a result of due investigation and does find that said road is being damaged and injured on account of the kind and character of traffic now being hauled over and upon said road, and by reason of the fact that loads of the maximum weight moved at the maximum speed specified by the provisions of the laws of the State of Oregon are breaking up, damaging and deteriorating the said road, and the Commission having found and does find upon due investigation that it will be for the best interests of the said state highway that the maximum weight of loads permitted upon said roads shall be reduced from 22,000 pounds to 16,500 pounds, and that the maximum weight of 600 pounds per inch for tires having a width in excess of 30 inches shall be reduced to 450 pounds per inch of tire width, and that the maximum allowable load for tires having a width of less than 30 inches shall be reduced to 500 pounds per inch width of tire to 375 pounds per inch width of tires.

It is hereby ordered that the maximum width of combined load and vehicle which shall be permitted upon said road shall not exceed 16,500 pounds, and that on any vehicle having a total tire width of less than 30 inches the concentrated weight in pounds bearing on the surface of the highway at contact with the tread of the two wheels of any one axle of such vehicle shall not exceed the product of the sum of the tire width of the two wheels of such axle, multiplied by 375 pounds; and on any vehicle having a total tire width of 30 inches or more than 30 inches the concentrated weight in pounds bearing on the surface of the highway at

contact with the tread of the two wheels of any one axle of such vehicle shall not exceed the product of the sum of the tire widths of the two wheels of such axle multiplied by 450 pounds.

It is further ordered that these rules and regulations as made and found by the State Highway Commission under the provisions of Chapter 371 of the laws of Oregon for 1921, as amended by Chapter 8 of the General laws of Oregon, 1921 Special Session, shall be in full force and effect from and after October 1, 1925 until revoked or modified by the State Highway Commission.

And it is further ordered that a notice be posted in a conspicuous manner and place at each end of said highway, and at every cross-roads, so that said notice can be readily seen and read, which notice shall state plainly the limitations and prohibitions of traffic hereby in this order determined and fixed.

And be it further ordered that a certified copy of this order be furnished to the county clerk of Hood River County, and that a certified copy of said order be furnished the Secretary of State for the information of the Chief of the Traffic Enforcement Division.

Dated this twenty-eighth day of August, 1925.

Oregon State Highway Commission, by Wm. Duby,
 [fols. 19-22] Chairman. H. B. Van Duzer, Commissioner.
 W. H. Malone, Commissioner.

Attest: Roy A. Klein, State Highway Engineer and Secretary.

[File endorsement omitted.]

[fols. 23 & 24] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS—Filed January 29, 1926

Comes now the defendants and move the court for an order dismissing the plaintiffs' bill of complaint on the ground and for the reason that said bill of complaint does

not state facts sufficient to constitute a cause of suit against the defendants or to entitle plaintiffs to the relief demanded.

L. H. Van Winkle, Attorney-General; J. M. Devers,
Asst. Attorney-General, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 25] IN UNITED STATES DISTRICT COURT

Before Gilbert, Circuit Judge, and Wolverton and Bean,
District Judges

W. R. Crawford, Seattle, Washington, for Plaintiffs.

L. H. Van Winkle, Attorney General, and J. M. Devers,
Assistant Attorney General, Attorney for Highway Com-
mission, for Defendants.

OPINION—Filed January 11, 1926

WOLVERTON, District Judge:

This is a suit on the part of owners and operators of motor trucks against the State Highway Commission, to enjoin it from enforcing an order made and promulgated August 28, 1925, whereby, until revoked or modified, motor trucks with a maximum weight of combined load and vehicle exceeding 16,500 pounds are inhibited the use of the highway. The highway involved extends from the east boundary of Multnomah County to the west limits of the City of Hood River, a distance of 22.11 miles, and is a part of what is known as the Columbia River highway extending from Portland to The Dalles, Oregon, which is a rural post road. Plaintiffs have complied with all the rules and regulations respecting the operation of motor trucks upon the highway, and were, prior to the date of such order, privileged so to operate, and to carry a combined maximum load not exceeding 22,000 pounds. They complain that the Highway Commission has reduced the maximum carrying capacity of their trucks per load to 16,500 pounds, thus invading their lawful and constitutional rights and privileges.

The case came up on an order to show cause why a preliminary injunction should not issue restraining defendant [fol. 26] from enforcing its order.

A motion to dismiss was interposed to the complaint by the defendant, and submitted at the same time.

In order to arrive at the legal and constitutional questions involved, it is necessary to give a brief statement of certain enactments of Congress and the Legislative Assembly of the State of Oregon.

By an Act of Congress of July 11, 1916 (c. 241, 39 Stat. 355), as amended February 28, 1919 (c. 69, 40 Stat. 1189, 1200), and the Federal Highway Act of November 9, 1921 (c. 119, 42 Stat. 212), the Secretary of Agriculture is authorized to co-operate with the states, through their respective highway departments, in the construction of rural post roads; but it is provided that no money appropriated under the act to any state shall be expended therein until its legislature shall have assented to the provisions of such act. It is further provided that the Secretary of Agriculture and the State Highway Department of each state shall agree upon the roads to be constructed therein and the character and method of construction.

Under the primary act, it is required (by its section 6) that the construction work and labor in each state shall be done in accordance with its laws, and under the direct supervision of the State Highway Department, subject to the inspection and approval of the Secretary of Agriculture, and in accordance with the rules and regulations made pursuant to the act. Under its section 7, the duty is imposed upon the states to maintain the roads so constructed according to the laws of the several states. Under the amendatory act (by its section 12) the construction and reconstruction work and labor in each state shall be done in accordance with its laws and under the direct supervision of the State Highway Department. And by its section 14, it is provided that, in case of failure of the state to maintain any highway within its boundaries after construction or reconstruction, the Secretary of Agriculture is authorized, on giving a prescribed notice, to proceed immediately to have the highway placed in proper condition of maintenance [fol. 27] at the charge and cost of the Federal funds allotted

to such state, and thenceforth to refuse to approve any other project in such state except as further provided in the act.

The state has, by due and proper enactment of its Legislative Assembly, accepted the provisions of the acts of Congress as required thereby. The State Highway Commission is the body duly authorized and empowered by the Legislative Assembly to act for the state in devising its policy, scheme and plan of highways within the state, to co-operate with the Secretary of Agriculture in approving the plans and specifications of highways to be laid and constructed, and to construct and maintain all rural post roads within the state. See Section 5 of an act "to provide a general system of construction, improvement and repair of State Highways and for the administration and operation thereof," etc. (c. 237, General Laws of Oregon 1917), and amendment thereto (c. 126, General Laws of Oregon 1919). By these enactments, the good faith of the state is further pledged "to maintain such roads and to make adequate provisions for carrying out such maintenance, and other Acts of Congress for similar purposes."

As early as 1917, it was enacted that no motor truck of over five tons capacity should be driven or operated upon any road or highway of the state, except upon permit of the county court of the county wherein such truck was sought to be driven. General Laws of Oregon, 1917, p. 268. In 1919, the provision was re-enacted that no motor truck of over five tons rated maximum load carrying capacity should be operated or driven over or upon any road or highway of the state. General Laws of Oregon, 1919, p. 719. In 1921 the Legislative Assembly adopted an act, its general purport being to regulate the use, regulation, conduct and operation of vehicles within the state. Herein it was enacted that no motor vehicle, motor truck, device or thing having a confined weight in excess of 22,000 pounds at the point of contact of the four wheels shall be moved over or upon any [fol. 28] highway without the written consent of the commission. C. 371, General Laws of Oregon 1921, p. 732. By the same act (section 36) the Highway Commission was authorized and empowered, whenever in its judgment it was deemed to the best interest of the state and for protection from undue damage of any highway or any section or sections thereof, to reduce the maximum weights and speeds in the act provided for vehicles moving upon such high-

way, and at the same time to fix the reduced weights and speeds. This section was amended at the special session of the legislature in December, 1921, and again at its 1923 session (General Laws of Oregon 1923, P. 204), but in no way do the amendments curtail the authority of the Highway Commission as above indicated.

It is not questioned that the section of the Columbia River Highway concerned in the present controversy is a rural post road within the purview of the Federal statutes applicable, and it can hardly be disputed that the State Highway Commission exercises, by delegation from the state, police powers in so far as it pertains to the maintenance of the state highways in proper condition and repair for the protection and general welfare of the public. *Hendrick v. Maryland*, 235 U. S. 610, 622.

It is the chief contention of counsel for plaintiffs that the Federal enactments by which aid by the General Government was extended to the several states for the construction and maintenance of highways within the states, and the acceptance thereof by the State of Oregon as required by Congress, constitute a contract which the state is bound to observe, and from which it cannot withdraw, and that such contract is one which inures to the benefit of the users of the highways, and which they are at liberty to invoke for the protection of their respective rights and privileges. Whether such correlative legislation can be termed a contract or not, it does constitute a legal status from which the state can neither withdraw nor alter, modify or qualify, without the consent or co-operation of Congress, and individuals, when their rights and privileges depending upon such joint and concurrent legislation, are trenched upon, [fol. 29] undoubtedly are entitled to have their relief in a proper forum.

But it may be justly questioned whether the action of the Legislature of the State fixing, as it did in 1921, the maximum load weight of trucks used upon the highway at 22,000 pounds, is or constituted a part of that concurrent legislation. We are persuaded that it does not. The statute (being c. 371, General Laws of Oregon 1921), was enacted, as its title signifies, "for regulating the use, registration, licensing, taxing, identification, conduct and operation of vehicles and bicycles in the State of Oregon, and for

the protection of same; * * * providing for punishment for violation of this act; prohibiting the unauthorized use or possession of a vehicle," etc., and the matter respecting the maximum load weight to be carried by trucks is plainly germane to the subject embraced by the title. It does not relate to any matter within the purview of the joint and concurrent legislation of Congress and the state respecting the construction and maintenance of rural post roads.

There is no constitutional or legal reason why the State Legislature might not at the time have made the maximum truckload less than 22,000 pounds, so that it did not make it so low as practically to rule trucks off the highway, which would raise a legislative question involving discretion touching the reasonableness of the provisions of the act.

The legislature having this power, it also had the power to delegate to the State Highway Commission the authority in cases of emergency to reduce the carrying weight of trucks until the emergency was relieved against. This is all the commission attempted and is attempting to do in the present case. The order of the commission is temporary, not permanent, it is "until revoked or modified."

The construction and reconstruction of the highways is required to be undertaken, and the work and labor in each state to be done, in accordance with its laws, and under the direct supervision of its highway department, and it is [fols. 30 & 31] made the duty of the states to maintain the roads constructed according to their respective laws; but should the state fail to properly maintain any highway within its boundaries, the Secretary of Agriculture is authorized, upon giving proper notice, to proceed immediately to place the same in proper condition. This is a burden imposed upon the General Government, and users of the highway have no right or authority to compel the repairs. The Government itself will come to their relief if exigency requires. Economically, highways, if falling into decay or disorder, should be protected until repaired or reconstructed, and the act of the State Legislative Assembly of 1921 recognizes this principle.

Another objection is interposed to the order of the Highway Commission, which is that it was issued without notice to the plaintiffs. This objection is without merit. The

public is not entitled to notice of the commission's intention as respects every move it purposes making for the protection of the highway.

Plaintiffs further complain that the commission has failed to keep the highway in proper repair, and that its default in this respect is what has necessitated the order complained of; but that, as we have seen, is a matter for the General Government, and not for the public.

In view of these considerations, it must follow that plaintiffs are not entitled to the preliminary restraining order as prayed, and from what has been said it is also apparent that the motion to dismiss should be sustained.

Let orders be entered accordingly.

[File endorsement omitted.]

[fol. 32] IN UNITED STATES DISTRICT COURT

OPINION ON MOTIONS FOR PRELIMINARY INJUNCTION AND TO
DISMISS—Filed March 15, 1926

BEAS, District Judge:

After the motion for a preliminary injunction had been denied, plaintiffs, by permission of the court, filed an amended bill, which is substantially the same as the original with the added averments that the highway in question has been permanently constructed; that the plaintiffs are engaged in traffic over it; that they are and have been delivering freight at their terminii, Portland and The Dalles (both in this state), to motor trucks for carriage in and out of the state as a continuous service; that the order of the Commission limiting the weight of load and vehicle makes it impossible for them to compete with the railroad which parallels the highway.

The effect of the Federal and State Highway legislation is considered in the opinion heretofore filed, and we are not disposed to depart from or modify the views therein expressed. In our opinion, the added averments do not entitle the plaintiffs to the relief asked. The state has paramount control over the use of the highways within its

border, and it may enact and enforce reasonable regulations governing the traffic over them, necessary to secure their preservation and maintenance, and the public safety (13 R. E. L. Sec. 212; Grand Trunk Western Ry. v. South Bend, 227 U. S. 544). The highways of the state are, of course, open to intrastate and interstate commerce alike, and the state cannot, under the guise of legislation deny one engaged in interstate commerce the use of its highways (Buck v. Kuykendall, 267 U. S. 307). But in the absence of national legislation covering the subject, the [fols. 33 & 34] state may rightfully prescribe uniform regulation- adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens (Hendrick v. Maryland, 235 U. S. 610; Kane v. New Jersey, 242 U. S. 160). If the state is impotent to protect its highways from destruction by excessively loaded trucks because, forsooth, they may be carrying interstate freight, it is difficult to understand how its right to regulate the speed or movement of such vehicles, or others carrying interstate passengers, can be supported.

The order of the Highway Commission complained of is not a discrimination against those engaged in interstate carriage or denying them the equal protection of the law. On the contrary, it puts all carriers by trucks on an equality.

The application for preliminary injunction is therefore denied, and in view of the provisions of Section 266 of the Judicial Code, as amended in February, 1925, the motion to dismiss the complaint will be sustained.

[File endorsement omitted.]

[fols. 35 & 36] IN UNITED STATES DISTRICT COURT

**ORDER DENYING MOTION FOR TEMPORARY RESTRAINING
ORDER—Filed March 20, 1926**

This matter coming before the court on the application of the plaintiff in the above entitled case for a temporary restraining order restraining the above named defendants from enfore-

... to be heard at this time upon the application of the plaintiff in the above entitled case for a temporary restraining order restraining the above named defendants from enfore-

In an order made by the Oregon State Highway Commission, which said order was dated August 28, 1925, and was made under the provisions of Chapter 371, General Laws of Oregon, 1921, which said order and statute are particularly set out and referred to in the bill of complaint filed by the plaintiffs; the plaintiffs appearing by W. R. Crawford, and the defendants appearing by J. M. Devers; said application having been heard by the Honorable William B. Gilbert, Judge of the U. S. Circuit Court of Appeals for the Ninth District, and Honorable Charles E. Wolverton and Robert S. Bean, Judges of the District Court of the United States for the District of Oregon; and the court having heard the argument of the counsel, and having filed its opinion herein, and now being fully advised, it is, therefore, ordered that said application for a temporary restraining order be, and the same is hereby denied.

Dated this 20th day of March, 1926.

Chas. E. Wolverton, Judge.

[File endorsement omitted.]

[fols. 37 & 38] IN UNITED STATES DISTRICT COURT

JUDGMENT—Filed March 20, 1926

This matter coming on to be heard at this time upon the motion of the defendants for an order dismissing plaintiff's amended bill of complaint herein on the ground and for the reason that said amended bill of complaint does not state facts sufficient to constitute a cause of suit against the defendants or to entitle them to the relief demanded; the plaintiffs appearing by W. R. Crawford and the defendants appearing by J. M. Devers, Assistant Attorney General, and the Court having heard the argument of counsel, and having filed its opinion directing that said motion to dismiss the amended bill of complaint herein be allowed, and now being fully advised,

It is hereby ordered that the defendants' motion to dismiss plaintiff's amended bill of complaint herein be, and the same is hereby, allowed; and plaintiff's having refused to plead further the said cause is hereby dismissed.

It is further ordered that defendants to have and recover of and from the plaintiffs their costs and disbursements herein, taxed in the sum of \$30.00, and that execution issue therefor.

Dated this 20th day of March, 1926.

Chas. E. Wolverton, Judge.

[File endorsement omitted.]

[fols. 39 & 40] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed March 20, 1926

This cause coming on to be heard upon the application of the Plaintiffs in the above entitled cause for the fixing of the amount of bond on appeal to the Supreme Court of the United States and the plaintiffs having this day given notice of appeal in open Court and the Court having heard the suggestions of the respective counsel of the parties hereto and being fully advised in the premises,

It is ordered, adjudged and decreed that the amount of such appeal bond be and it is hereby fixed at \$500.00 dollars, and further,

It is ordered, adjudged and decreed that said appeal prayed for by the plaintiffs be and it is hereby allowed upon the filing of a proper bond as provided for by law in the sum of \$500.00 dollars and approved by the Court.

Dated this 20 day of March, 1926.

Chas. E. Wolverton, Judge.

[File endorsement omitted.]

[fol. 41] IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed March 20, 1926

And now, on this 20th day of March, A. D., 1926, came the plaintiffs by their solicitor W. R. Crawford, and say that the order entered in the above cause on the 20th day of

March, A. D. 1926, denying the application for a temporary or interlocutory injunction against the defendants herein, is erroneous and unjust to plaintiffs:

Because the Court erred in refusing and denying the application by plaintiffs for a temporary or interlocutory injunction against Wm. Duby, H. B. Van Duzer and W. H. Malone, the defendants herein.

And further, and now, on this 20th day of March, A. D., 1926, came the plaintiffs by their solicitor W. R. Crawford, and say that the order entered in the above cause on the 20th day of March A. D., 1926, granting the motion to dismiss the amended complaint in such cause and dismissing the said amended complaint, is erroneous and unjust to plaintiffs:

First. Because the Court erred in granting the said motion to dismiss the said amended complaint, and,

Second. Because the Court erred in dismissing the amended bill of complaint.

Third. Because the Court erred in dismissing the cause upon refusal of the plaintiffs to further plead after the amended complaint had been dismissed.

Wherefore the plaintiffs pray that the said order refusing the said interlocutory or temporary injunction be reversed, and further that the said decree entered in such cause be reversed, and the District Court be instructed to enter proper order or decree granting said interlocutory or [fols. 42-50] temporary injunction, and further that the District Court be instructed to enter such decree as prayed for by said amended bill of complaint, or for such proper relief as the plaintiffs are entitled to and as the nature of the cause demands.

W. R. Crawford, Solicitor for Plaintiffs.

[File endorsement omitted.]

[fol. 51] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION
BY APPELLANTS OF PARTS OF THE RECORD TO BE PRINTED
WITH PROOF OF SERVICE—Filed May 13, 1925

I

That the lower Court erred in denying the application for a temporary injunction.

II

That the lower Court erred in dismissing the amended bill of complaint.

III

That the lower Court erred in dismissing the cause of action.

IV

That the Rural Post Act of 1916, as amended by the Federal Highway Act of 1921 were adopted by the State of Oregon in 1917 and in subsequent years thereafter, and by such adoption the said provisions of said Federal Acts became contracts and could not be constitutionally voided by any subsequent legislative act by the State of Oregon.

V.

• That said Federal Highway Acts, so adopted by said State, compelled the system of Federal aided highways in said State to be constructed and reconstructed in a permanent manner so as to furnish sufficient strength and width to take care of the then traffic and also probable future traffic.

VI

That said Federal aided highways were aided by the Federal Government in an amount of more than \$13,000,000.00, and such highways were built and reconstructed in a permanent manner, including that portion of the Columbia River Highway between the East Line of Multnomah County and Hood River City, Oregon.

VII

That said portion of said Columbia River Highway aforesaid, as well as the remaining portion of said Columbia River Highway is in first class condition and has in no way [fol. 52] been damaged or destroyed, nor is it in danger of being damaged or destroyed by the operation of the motor trucks of the above appellants, carrying the legal maximum weight of trucks and loads of 22,000 pounds.

VIII

That the Appellants had been operating, their trucks under the sanction of the gross maximum weight which had been fixed and established prior to the adoption of the said Federal Highway Acts, and the same legal gross maximum weight is still in force, to-wit, 22,000 pounds for truck and load.

IX

That the Appellants had prior to October 1, 1925, purchased motor trucks for the sole purpose of carrying the capacity loads within the said gross maximum weight as so fixed by the said law and said Federal Highway Acts. That Appellants were compelled to and did pay license fees for such capacity trucks, being largely in excess required of trucks of smaller capacity and also were compelled to pay and did pay the exaction on the width of tires as required by law, in order to operate such capacity trucks, which charge is largely in excess of trucks of smaller capacity. That the Appellant Morris is now and has been operating the maximum capacity trucks for more than Four and one-half years prior to said October, 1925, and the other Appellants have been *operating* their trucks with maximum capacity for various periods prior to said October 1, 1925.

X

That the said order made by said Appellees reducing the said legal gross maximum weight of truck and load from 22,000 pounds to 16,500 pounds, was made without any notice or hearing, not only to the Appellants but all other persons. That such order was arbitrary and unreas-

sonable and was not warranted by either the facts or the law, and destroyed and damaged the rights and privileges vested in the said Appellants to operate their said trucks with the said legal gross weight of truck and load, to-wit, 22,000 pounds.

XI

That said order affects the following portion of the Columbia River Highway, Federal aided and interstate in character, between the East Line of Multnomah County and Hood River City, a distance of 22 miles, by changing the [fol. 53] said statutory gross maximum weight to 16,500 pounds, without any warrant of fact or law, as the said Appellees were not vested with any jurisdiction or power to reduce such gross maximum load provision, but such action was contrary to and in violation of the provisions of the said Federal Highway Acts as adopted by said State, especially in requiring all Federal aided highways to be constructed and reconstructed in a permanent manner in order to take care of the then traffic and also probable future traffic, by constructing and reconstructing such highways with sufficient strength and width. That the said portion of said Columbia River Highway affected by said order had been constructed and reconstructed during the years 1920 and 1923, and that said highway between Portland and The Dalles, including said portion affected by said order, was in first class condition and repair and had never been damaged, injured or destroyed by the operation of Appellants' motor trucks carrying a gross maximum weight of truck and load of 22,000 pounds and that the same is in no danger of being damaged, injured or destroyed by the operation as aforesaid by said Appellants. The said portion affected by said order was constructed and reconstructed many years subsequent to that portion West of the East County Line of Multnomah County to Portland, which was constructed and reconstructed in the same manner and with the same material and in a permanent manner.

XII

Said order damages, injures and destroys the said operation of the said Appellants, in that for many years tariffs of rates had been filed with the Public Service Commission

as required by law, and such tariffs were just and reasonable, and were based upon the said statutory gross maximum weight of truck and load, and that it would be impossible for the Appellants to change such tariff and double the same as such additional charge would be unreasonable and unjust, and said Public Service Commission would not permit such additional charge, yet the said order decreases the legal capacity of said trucks so that the earning ability thereof would be cut in two and the legal charges would not be sufficient to pay for the operation of said trucks. The public would be injured and has already been injured [fol. 54] by such order.

XIII

That said order was issued wholly and solely in the interest of the railroad lines and the steamboat lines competing for the business of said motor trucks between Portland and The Dalles and beyond.

XIV

That the Appellants have been transporting interstate commerce between the State of Oregon and the State of Washington and such order not only burdens interstate commerce but has destroyed it.

XV

That the Appellants, as well as other owners of motor trucks operating in and out of Portland, Oregon, have secured a terminal for freight worth over \$250,000.00 and that such order has affected the earnings of said terminal.

XVI

Said order discriminates against these Appellants in favor of motor busses.

XVII

That the said order is in violation of and contrary to the Commerce Clause of the Constitution of the United States, and especially the 14th Amendment thereof, and also the

Federal Legislation, extending aid to the State of Oregon, adopted by the State of Oregon which constitutes a contract and the protection of which is sought by these appellants.

XVIII

That Appellants were entitled to the issuance of a temporary injunction, as the Appellees admit that the only cost of keeping said portion of said highway affected by said order amounted to about \$5,000.00, and Appellants offered to and were able and willing to secure all damage or injury, if any, by a good and sufficient bond so as to indemnify the State of Oregon for any damage or injury to such portion of said highway caused by the operation of Appellants' trucks carrying the gross maximum weight of trucks and loads of 22,000 pounds instead of said 16,500 pounds as set out in said order.

We contend that the said action of the lower Court in [fol. 55] refusing to grant said temporary injunction on application on the amended bill of complaint herein should be reversed, and further that the action of the lower Court in dismissing the amended bill of complaint should be reversed, and the action of the lower Court in dismissing the cause of action and for any other or proper relief as this Court may deem proper and fit in the premises.

W. R. Crawford, Edwin C. Ewing, Counsel for Appellants.

[fol. 56] STATE OF WASHINGTON,
County of King, ss:

F. B. Kliphause being first duly sworn upon oath deposes and says: That he is a citizen of the United States, residing at Seattle, Washington, over the age of 21 years and is qualified to be a witness in the above entitled cause; that about Five (5:00) P. M. May 5, 1926, he mailed at the Post Office in the Federal Building at the corner of Third Avenue and Union Street, Seattle, Washington, a certain letter which was duly registered addressed to L. H. Van Winkle, Attorney General of the State of Oregon, at Salem, Oregon, in which letter was contained as an enclosure a copy of points relied upon by the Appellants in the above entitled

cause and also another enclosure entitled a statement of the parts of the record to be printed in the above entitled cause.

F. B. Kliphouse.

Subscribed and sworn to before me this 5th day of May, 1926. Morris B. Sachs, Notary Public in and for the State of Washington, Residing at Seattle. (Seal of Morris B. Sachs, Notary Public, State of Washington. Commission expires Jan. 2, 1928.)

[fol. 57] Parts of Record in the Above-entitled Cause
Hereby Designated to be Printed

1. Amended Bill of Complaint.
2. Order denying interlocutory or temporary injunction.
3. The Motion to dismiss the Amended Bill of Complaint.
4. The Order or Decree dismissing the Amended Bill of Complaint and dismissing the cause, on refusal to plead further.
5. Assignment of Errors.
6. Opinions of the Court.
7. Names of Attorneys and Addresses.
W. R. Crawford, Edwin C. Ewing, Solicitors for Appellants.

[fol. 58] [File endorsement omitted.]

Endorsed on cover: File No. 31,926. Oregon D. C. U. S. Term No. 372. R. B. Morris, doing business as Morris & Lowther; H. M. Hewitt, and Lew Nunamaker, etc., et al., appellants, v. Wm. Duby, H. B. Van Duzer, and W. H. Malone, etc. Filed May 13th, 1926. File No. 31,926.

(2119)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

NO.

R. B. MORRIS, doing business as Morris & Lowther; H. E. Hewitt and Lew Nunamaker, doing business as John Day Valley Freight Line; H. L. Livingston, doing business as Bend-Portland Transit; and Portland-Hood River Truck Line, Inc., *Appellants*,

v.

William Duby, H. B. Van Duzer and W. H. Malone, as the Oregon State Highway Commission,
Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

PETITION FOR A STAY OR IN THE ALTERNATIVE FOR THE ADVANCEMENT OF THE CASE.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, R. B. Morris, doing business as Morris & Lowther; H. E. Hewitt and Lew

Nunamaker, doing business as John Day Valley Freight Line; H. L. Livingston, doing business as Bend-Portland Transit; and Portland-Hood River Truck Line, Inc., have been and are now owners and operators of motor trucks carrying freight and express as common carriers between Portland, Oregon, and The Dalles, Oregon, and points beyond on the Columbia River Highway, a Federal aided Highway, interstate in character, and said petitioners have been and are now carrying interstate commerce between the States of Oregon and Washington in connection with other carriers.

That the Appellees, constituting the State Highway Commission, issued a certain order to take effect on October 1, 1925, limiting the gross weight of trucks and loads to 16,500 pounds per truck.

That the Appellants herein instituted a certain action in the District Court of the United States for the District of Oregon, seeking to obtain a permanent injunction against the said State Highway Commission restraining it from limiting said gross weight as aforesaid, and prayed for a temporary injunction until final hearing and determination of said case. Such application was heard before the said District Court, consisting of Three Judges, one of whom was a Circuit Judge, all as provided for by the Judicial Code. That after such application had been denied, an amended bill of complaint was filed, after consent of said Court was obtained. A new

application for a temporary injunction was presented and heard by the said District Court, consisting of the same Three Judges, and the said application on said amended complaint was denied and at the same time the said Court, consisting of said Three Judges, ordered the motion to dismiss which had been presented in said cause on said amended bill of complaint, to be granted, and upon failure and refusal to amend further the cause itself was ordered dismissed and a final decree entered in accordance with such order.

The ground upon which said District Court denied the application for a temporary injunction upon said amended bill of complaint and dismissing such cause was generally that the State Highway Commission was vested with the authority and jurisdiction to fix limitations of the gross weight of trucks and loads, irrespective of the statutory limitations of the maximum of gross weight of trucks and loads. That from such decree denying said application for a temporary injunction based upon said amended bill of complaint and the final decree dismissing said cause, the petitioners duly appealed to this Court, and such cause is now docketed herein. These petitioners present the following grounds in support of such appeal:

1. That the allegations of the amended bill of complaint upon which said temporary injunction was asked were all admitted to be

true by the motion to dismiss, as no other defense was made.

2. The order made by the said State Highway Commission diminished the gross maximum load fixed by law at 22,000 pounds to 16,500 pounds gross weight of truck and load. That such order only relates to a distance of approximately 22 miles between the East line of Multnomah County and Hood River City, but does not effect the said Columbia River Highway, a Federal aided highway, interstate in character, situated between Astoria, via Portland, through Hood River City, The Dalles to the Idaho State Line.
3. That the petitioner Morris has been operating his trucks for more than four and one-half years from Portland on said Columbia River Highway through the portion effected by said order to The Dalles, and the other petitioners have been so operating prior to said order for various periods. That said petitioners, long prior to said October 1, 1925, purchased trucks weighing from 11,500 pounds to 12,500 pounds in order to carry the capacity loads as fixed by the State. Petitioners were compelled to and have paid the highest license fees on their capacity trucks and the highest charge for the width of tires required by the law for such capacity trucks.
4. Petitioners were required to file with the Public Service Commission schedules of operation and tariffs and have done so. That such schedules so filed have been adopted by the said Public Service Commission of the State

as just and reasonable, and without action of the said Public Service Commission the said tariffs can not be increased, and the said Public Service Commission has informed the said petitioners that the said tariffs will not be permitted to be increased. That the petitioners adopted such tariffs based upon the said capacity loads of said trucks, to-wit, a gross maximum of load and truck of 22,000 pounds per truck, and that such order decreasing the said gross maximum to 16,500 pounds for such 22 miles would damage and destroy their business, as the load capacity would be decreased more than one-half, and necessarily would effect the said published tariffs and would destroy the business of these petitioners.

5. It is admitted that such action of said State Highway Commission was made without any notice to these petitioners or any one else, and that such action was arbitrary and unreasonable and that the said portion of said Columbia River Highway had been built many years prior to the said portion of said highway from the said East Line of Multnomah County to Portland, Oregon, and that that portion of the said highway from Hood River City to The Dalles had been constructed at the same time as that portion between Hood River City and the East line of Multnomah County. That the said portion of said highway affected by said order was built prior to 1920 and has been reconstructed and widened by the aid granted by the Federal Government under the Rural Post Road Act of 1916, as amended by the "Federal Highway Act"

of 1921. That said portion affected is in perfect condition and repair and is not being in any way damaged or destroyed by the operation of petitioners' trucks and such operation of said petitioners' trucks would not in the future damage such portion of said Federal aided highway. That these petitioners only operate nine trucks of such capacity between Portland, through the affected portions to The Dalles and beyond. That steamboat lines and railroad lines are parallel to the said portion affected by said order, and the operation of the petitioners' trucks furnishing adequate facilities to the public at a reasonable price have impaired the freight earnings of said steamboat lines and said railroad lines, and said order was made in the interest of said steamboat lines and said railroad lines and to destroy competition by motor trucks. The said State Highway Commission promulgated another order diminishing the legal gross maximum weight of truck and load of 22,000 pounds to 16,500 pounds, which affects the entire system of Federal aided highways in said State by affecting portions of 14 Federal aided highways in the same manner as the Columbia River Highway, and all said portions of said 14 other Federal aided highways are parallel to railroad lines.

6. That the property of petitioners was taken without due process of law, as they had paid for the privilege of operating maximum gross weight on such affected portions of said Columbia River Highway, and their business would be destroyed and irreparably damaged

by compelling their freight to be rehandled at either the East line of Multnomah County or Hood River City, and additional equipment to be purchased and used for such 22 miles, and further said freight rates so changed and modified without a hearing and without any notice, and that the petitioners as well as others operating out of Portland have had constructed a freight terminal at Portland at a cost of over \$250,000.00 in order to handle freight in and out of Portland, and at such terminal many hundreds of tons of freight are handled and the said results of said orders will bankrupt and destroy said terminal, as well as these petitioners and other owners and operators of motor trucks affected thereby.

7. That the State Highway Commission has never been vested with any authority or jurisdiction to fix any different gross weight maximum of truck and load, as enacted by the legislature, to-wit, 22,000 pounds. That the said order illegally diminishes the legal weight and is not based upon any emergency or condition of highway.
8. That said order was issued for the sole purpose of destroying competition.
9. That the petitioners are protected under the Federal aided highway legislation, namely, that the State of Oregon duly enacted a law adopting the said Rural Post Road Act, as amended by the Federal Highway Act, and did agree to construct and reconstruct highways to be aided by Federal moneys under a

plan approved by the Secretary of Agriculture of the United States, and that said State agreed to construct and reconstruct such Federal aided highways in a permanent manner, and with sufficient strength and width to take care of the then traffic as well as probable future traffic. That the State did construct and reconstruct said portion of said Columbia River Highway in a permanent manner by hard-surfacing the same in the same manner and with the same material as the adjacent portions of said Columbia River Highway, East of Hood River City and West of the Multnomah County East Line. That when said State adopted the said provisions of said Federal Acts, the State had fixed a gross weight of truck and load at 22,000 pounds and said gross maximum weight is now in full force and effect. That the State Highway Commission never had any authority to in any way change, modify or prohibit the said gross maximum weight provision at the time when the said Federal Acts were adopted by said State, and when the said petitioner Morris, as well as other operators of motor trucks, had engaged in business. It was not until the year 1921 that the State delegated authority to regulate the use of highways by the State Highway Commission, but only was a power vested in said State Highway Commission to regulate the use of said highways while the same were being reconstructed or repaired.

10. That the petitioners were and are protected under the said contract entered into between the Federal Government and the State of

Oregon, as aforesaid, and are entitled to operate their said motor trucks with a gross maximum weight of truck and load of 22,000 pounds, as said Columbia River Highway and the portion of the same affected by said order was constructed and reconstructed for the strength necessary to carry said gross maximum weight of 22,000 pounds for truck and load. That in the year 1920 when said portion of said Columbia River Highway affected hereby was constructed and was reconstructed in 1922 by widening the same, there were only four trucks with the maximum capacity, and since the year 1920 other trucks of the same capacity have been added from time to time until at the present time there are nine trucks of such legal capacity of 22,000 pounds. That since said years private automobiles have increased until a daily average of over 1,500 are now using such portion of said highway. Moreover, motor busses have increased in number and capacity so that there are now many more motor busses on such highway than said trucks with the maximum capacity. And that such motor busses weigh with bus and load 16,500 pounds, and have a speed of 30 miles per hour, while the trucks of the petitioners are restricted to the speed of 12 miles per hour. That such motor busses do not engage in interstate commerce but their entire operation is intrastate. That the said order discriminates against the operation of said trucks of petitioners in favor of said motor busses, and burdens interstate commerce as aforesaid.

11. That the said portion of said highway affected by said order has only cost for maintenance for one year last past the sum of approximately \$5,000.00, and that the petitioners offered to and were able to furnish a good and sufficient bond to indemnify the said State against any damage whatsoever that might accrue by operating petitioners' trucks with the said gross maximum load of truck and load of said 22,000 pounds, and are still ready, willing and able so to do.
12. That the petitioners are entitled to protection against the said infringement of their rights, as protected by the commerce clause of the Constitution of the United States, the 14th Amendment thereof and the contract entered into between the said Federal Government and the State of Oregon as aforesaid.

On the one hand the State would be protected by a good and sufficient bond to guarantee against damage by petitioners' trucks as aforesaid, while on the other hand the petitioners, if not protected by such stay order pending the determination of the appeal pending in this Court, will lose the moneys which they have paid for their increased license fees and the tire width charge, and also will be irreparably injured and damaged in their business which will be destroyed during the pendency of this appeal, and the public itself will not only lose the facilities furnished by said motor trucks, but also will be compelled to pay higher prices for the carrying of such freight, as now

carried by these petitioners, and competition will be destroyed.

Wherefore these petitioners herein, pray that an order be made, herein restraining, until the final determination by this Court of the appeal herein, the said William Duby, H. B. Van Duzer and W. H. Malone, as the Oregon State Highway Commission, appellees herein, their agents, servants and employees, from arresting or causing the arrest, or in any way interfering with or obstructing the appellants', their agents, servants, employees and drivers from operating motor trucks with a gross maximum weight of truck and load of 22,000 pounds, or for such order as may be proper, the premises considered, agreeable to the usages and practices of law.

W. R. CRAWFORD

EDWIN C. EWING

Counsel for Appellants.

STATE OF WASHINGTON.

County of King, ss:

W. R. Crawford, being first duly sworn, upon oath deposes and says: That he is one of the counsel for the Appellants in the above entitled cause, that he has read the foregoing petition for a stay and knows the contents thereof, and that the matters set out therein are true, except as to

the matters set out on information and belief,
and as to such matters it is true as he verily be-
lieves.

W. R. CRAWFORD

Subscribed and sworn to before me this 5th day
of May, 1926.

MORRIS B. SACHS,

*Notary Public in and for the State
of Washington, residing at Seattle.*

IN THE SUPREME COURT OF THE
UNITED STATES
October Term, 1925

No.

R. B. MORRIS et al., *Appellants*,

v.

WILLIAM DUBY et al., *Appellees*.

On Appeal from the District Court of the United
States for the District of Oregon.

To HONORABLE I. H. VAN WINKLE
Attorney General of Oregon.

Sir:—

Please take notice that a petition for a stay or
in the alternative for the advancement of the case
in the above entitled cause, a copy of which is
handed you by registered mail, will be submitted
to the Supreme Court of the United States on
May 24, 1926.

W. R. CRAWFORD
EDWIN C. EWING
Counsel for Appellants.

IN THE SUPREME COURT OF THE
UNITED STATES
October Term, 1925.

No.

R. B. MORRIS et al., *Appellants*,
v.

WILLIAM DUBY et al., *Appellees*

AFFIDAVIT OF SERVICE

STATE OF WASHINGTON,

County of King, ss:

F. B. Kliphouse, being first duly sworn, upon oath deposes and says: That he is a citizen of the United States, residing at Seattle, Washington, over the age of 21 years, and is qualified to be a witness in the above entitled cause; that about five (5) o'clock P. M. May 5, 1926, mailed at the Post Office in the Federal Building at the corner of Third Avenue and Union Street, Seattle, Washington, a certain letter which was duly registered addressed to Honorable I. H. Van Winkle, Attorney General of the State of Oregon, at Salem, Oregon, in which letter was contained as an enclosure a copy of the petition for a stay or in the alternative the advancement of

the case, and an additional enclosure giving notice that said petition would be submitted to the Supreme Court of the United States on May 24, 1926.

F. B. KLIPHOUSE

Subscribed and sworn to before me this 5th day of May, 1926.

MORRIS B. SACHS,

*Notary Public, in and for the State
of Washington, residing at Seattle.*

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1925

No. *12,000*

L. S. Martine, M. C. Yahne, Fred Gordon, T. E. Scott, J. B. Farrell, George Bauer, O. S. Crowder, Walter Nelson, Robert E. Frazier, doing business as Portland-Hood River Truck Line; George V. Bishop, Henry Kunz, Nelson Kirkpatrick, doing business as Interstate Truck Service; G. P. Philley, L. Wallen, Wm. Jossy, J. W. Guyer, Morgan Brothers, by H. E. Morgan, A. H. Cramer, P. L. Wilkinson, doing business as Alert Transfer & Storage Co.; Robt. R. Bailey, Reddway Truck, Inc., John McDonald, Francis O. Farney, Shelley Bowen and Chas. O'Malley, *Appellants*,

v.

Sam A. Kozer, Secretary of State of Oregon,
Appellee.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

PETITION FOR THE ADVANCEMENT OF THE ABOVE-ENTITLED CASE

To the Honorable the Chief Justice and the Associated Justices of the Supreme Court of the United States:

Your Petitioners, the above named Appellants, show as follows: That, on December 23, 1925,

the Petitioners duly instituted an action in the District Court of the United States for the District of Oregon and the District Court sustained the motion to dismiss the amended bill of complaint, and also dismissed the cause upon refusal of the Petitioners to plead further. An appeal has been duly perfected to this Court from the said order and decree.

That the matters involved are as follows:

1. That the Rural Post Road Act was enacted in the year 1916 and was thereafter amended by the Federal Highway Act of 1921.
2. That the State did in 1917 duly enact a law adopting the provision of said Rural Post Road Act, as amended aforesaid in 1921. That since the adoption of said Federal Acts the State has received many millions of dollars under the provisions of said Federal Acts, so adopted by said State.
3. That said Federal Acts provided that: "That all highways constructed or reconstructed under the provisions of this act shall be free from tolls of all kinds."
4. That under the provisions of said Federal Acts a system of primary and secondary highways, which embrace practically all of the highways of said State, was duly adopted, and the Federal aid has been used by said State in the construction and reconstruction of such system of highways, and such aid is being now paid to the State.

5. That since the year 1921 the said State has enacted laws exacting fees for the use of motor vehicles operating on the highways, fees for the owners of such vehicles, fees for drivers of such motor vehicles, fees for dealers selling such motor vehicles, and fees based on the amount of motor liquid fuel used by said motor vehicles operating on such highways. Such exactions have become and are becoming unreasonable and unjust.
6. That the Registration fees involved herein are charged and collected only against the motor vehicles themselves, and the Appellee, under color of his office, has and will continue to enforce the provisions of the said State law and has and will compel all persons, firms and corporations, as well as the Petitioners, to pay such registration fees in advance of the use of such motor vehicles on said public highways. That the Petitioners, as well as all persons, firms and corporations similarly situated or interested, will use during the year 1926, and in the future years, their said motor vehicles on the said Federal-aided highways of said State, and they will be subject to arrest and heavy fines imposed, or imprisonments, or both, unless they pay such registration fees in advance of said use.
7. That all of the said moneys to be charged and collected for said registration fees for the calendar year of 1926, will aggregate not less than Four Million Dollars. Such registration fees vary from \$15.00 for the smallest car, up to over \$200.00 for the calendar year.

8. That all of such moneys to be so charged and collected will be used exclusively for the construction and reconstruction of the said Federal-aided highways, in addition to the moneys paid by the Federal Government under said Highway legislation. None of such money will be used to pay for the regulation or administration of the law, but all of the money to be charged and collected for owners', driver's and dealers' fees are more than sufficient to cover all the costs of regulation and administration of such law, relating to the regulation of the use of public highways by motor vehicles. Such exaction is a "toll," being exclusively a charge for the benefits derived from the improvements so made.
9. The actions of the Appellee are and will be illegal, as being in contravention of the Constitution of the United States, especially the 14th Amendment thereof, and the Federal Highway Acts so adopted by the said State, the benefits of which the said State has and will continue to have.

Your Petitioners say further that the above case should be advanced and heard as speedily as possible for the following reasons, to-wit: That the Petitioners, as well as all others, will be compelled to pay such exorbitant and illegal exactions, or will suffer the penalties under said law. That the matter involved herein affects not only this State, but also all of the States of the Union, as such similar exactions are being made and millions of dollars are being now charged and collected as "tolls" for the use of motor vehicles on the Federal-aided highways of such States.

That there is now pending on appeal in this Court another case from the District of Oregon, entitled *Anthony et al., v. Koser*, numbered 1047 in the October Term, 1925, which involves the exaction of a charge on gasoline for the use of motor vehicles operated exclusively on public highways, the moneys so derived to be expended in the construction and reconstruction of the system of Federal-aided highways in said State, and the question is whether or not such exaction is prohibited by the provisions of said Federal Highway Acts, prohibiting the charging of "tolls."

Wherefore, the Petitioners pray this Court to advance the above entitled cause and for a speedy hearing and determination of the same, and further that the Court will order the consolidation for hearing of the above entitled cause with the said case of *Anthony et al., v. Koser*, No. 1047, of the October Term, 1925, and permission to be given to present such cases, if consolidated, by one brief covering such two cases.

W. R. CRAWFORD,
EDWIN C. EWING,
Counsel for Appellants.

ANTHONY et al., *Appellants.*

v.

KOZER, *Appellee.* No. 1047 October Term, 1925.

We, the Appellants in the above entitled cause numbered 1047 of the October Term, 1925, petition this Honorable Court for the advancement of such cause and for a consolidation with the said cause entitled *Martine et al., Appellants, v. Kozer, Appellee,* and for the privilege of presenting such consolidated causes in one brief, as questions are similar and based on the Federal Highway Acts and the adoption thereof by the State.

W. R. CRAWFORD,

EDWIN C. EWING,

Counsel for Appellants.

STATE OF WASHINGTON,

County of King, ss:

W. R. Crawford, being first duly sworn, upon oath deposes and says: That he is one of the counsel for the Appellants in both of the above entitled causes, that he has read the foregoing petitions for the advancement and the consolidation of said causes and knows the contents thereof, and that the matters set out therein are true, except as to the matters set out on information and belief, and as to such matters it is true as he verily believes.

W. R. CRAWFORD.

Subscribed and sworn to before me this 15th day of May, 1926.

MORRIS B. SACHS.

*Notary Public in and for the State
of Washington, residing in Seattle.*

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1925.

No. 1244

MARTINE et al., *Appellants*,

v.

KOZER, *Appellee*.

No. 1047 October Term, 1925.

ANTHONY et al., *Appellants*,

v.

KOZER, *Appellee*.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

To the Honorable I. H. Van Winkle, Attorney-General of Oregon:

Sir:

Please take notice that a petition for the advancement of the cases in the above entitled causes, a copy of which is handed you by registered mail, will be submitted to the Supreme Court of the United States on June 7, 1926.

W. R. CRAWFORD,
EDWIN C. EWING,
Counsel for Appellants.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1925.

No.

MARTINE et al., *Appellants*,
v.
KOZER, *Appellee*.

No. 1047 October Term, 1925.
ANTHONY et al., *Appellants*,
v.
KOZER, *Appellee*.

AFFIDAVIT OF SERVICE
STATE OF WASHINGTON,

County of King, ss:

F. B. Kliphouse, being first duly sworn, upon oath deposes and says: That he is a citizen of the United States, residing at Seattle, Washington, over the age of 21 years, and is qualified to be a witness in the above entitled causes; that about Five (5:00) o'clock P. M., May 15, 1926, he mailed at the Post Office in the Federal Build-

ing at the corner of Third Avenue and Union Street, Seattle, Washington, a certain letter which was duly registered, addressed to Honorable I. H. Van Winkle, Attorney-General of the State of Oregon, at Salem, Oregon, in which letter was contained as enclosure a copy of the Petition for the advancement of the above cases, and an additional enclosure giving notice that said Petition would be submitted to the Supreme Court of the United States on June 7, 1926.

F. B. KLIPHOUSE.

Subscribed and sworn to before me this 15th day of May, 1926.

MORRIS B. SACHS,

*Notary Public in and for the State
of Washington, residing at Seattle.*